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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 BISMARCK FONSECA-VANEGAS,)
11)

12 Petitioner,)

13 vs.)

14 IMMIGRATION AND)
15 NATURALIZATION SERVICE, *et al.*,)

16 Respondents.)
17 /

3:07-cv-00400-JCM-VPC

ORDER

18 This action is a *pro se* petition for a writ of habeas corpus filed by a Nevada prisoner.
19 According to the Nevada Department of Corrections Offender Tracking Information System,
20 petitioner is no longer in custody.

21 Pursuant to the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a federal
22 challenge to a state court judgment is limited to those inmates who are in custody pursuant to a state
23 conviction:

24 The Supreme Court, a Justice thereof, a circuit judge, or a district court
25 shall entertain an application for a writ of habeas corpus in behalf of a
26 person in custody pursuant to the judgment of a State court only on the
ground that he is in custody in violation of the Constitution or laws or
treaties of the United States.

1 28 U.S.C. § 2254(a). Because custody is a statutory jurisdictional prerequisite, a federal district
2 court may only consider a habeas petition if the petitioner is in custody. *Maleng v. Cook*, 490 U.S.
3 488, 490-91 (1989). Moreover, a case becomes moot if there is no longer a case or controversy
4 following petitioner's release from custody. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998). A petition
5 becomes moot following petitioner's release from custody where petitioner does not show collateral
6 consequences. *Spencer*, 523 U.S. at 12-13; *Wilson v. Terhune*, 319 F.3d 477, 480-81 (9th Cir. 2003);
7 *Cox v. McCarthy*, 829 F.2d 800, 803 (9th Cir. 1987); *Naylor v. Superior Court*, 558 F.2d 1363, 1365-
8 66 (9th Cir. 1977). As such, this action is dismissed as moot.

9 **IT IS THEREFORE ORDERED** that this action is **DISMISSED** with prejudice.

10 **IT IS FURTHER ORDERED** that the clerk of court shall enter judgment
11 accordingly.

12 DATED this 30th day of August, 2010.

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15 UNITED STATES DISTRICT JUDGE
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